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Paper No. 7

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SEP 3 0 2003

In re Application of
Davis et al.
Application No. 09/840,018
Filed: April 20, 2001
Attorney Docket No. P0363

OFFICE OF PETITIONS

ON PETITION

This is a decision on the "PETITION FOR ACCEPTANCE OF UNINTENTIONALLY DELAYED CLAIM OF PRIORITY," filed April 24, 2002. This petition was recently forwarded to the Office of Petitions for consideration. The Office apologizes for the delay in responding to the present petition.

The petition is **GRANTED**.

Applicant petitions for the acceptance of the unintentionally delayed claim of benefit of U.S. provisional application 60/198,857, filed April 21, 2000, in U.S. Application No. 09/840,018, filed April 20, 2001. A petition under 37 CFR 1.78(a)(6), to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of a prior filed provisional application, is applicable as the application was filed on or after November 29, 2000. Further, the petition is appropriate as the period set forth in 37 CFR 1.78(a)(5)(ii) for timely submitting the reference has expired, yet the nonprovisional application is still pending.

The surcharge set forth in 37 CFR 1.17(t) has been charged to Deposit Account No. 50-1071, as authorized. The petition includes a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5) and the date the claim was filed was unintentional. The application was filed with an application data sheet which included references to two prior nonprovisional applications, but not to the instant prior provisional application. Accompanying the petition is a preliminary amendment, amending the first sentence of the specification following the title to also include the reference to the prior provisional application. See 35 U.S.C. 119(e) and 37 CFR 1.78(a)(5). Finally, the instant nonprovisional application, filed April 20, 2001, was filed within one year of the provisional application, filed April 21, 2000, for which benefit is sought.

Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119(e), the petition to accept an unintentionally delayed claim

benefit to prior filed provisional Application No. 60/198,857 is granted as of the date of filing the petition.

The application is being forwarded to the Office of Initial Patent Examination for pre-examination processing, which will include entry of continuity with prior filed provisional Application No. 60/198,857, and for mailing of a corrected filing receipt. Thereafter, the application will be forwarded to Technology Center AU for processing the amendment filed April 24, 2002 and for consideration by the examiner of the claim under 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior provisional application(s), Application No(s). 60/198,857, filed on April 21, 2000.

Telephone inquiries pertaining to this decision may be directed to Nancy Johnson, Senior Petitions Attorney, at (703) 305-0309.

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